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DE RUEHJA #1177/01 1941044  
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FM AMEMBASSY JAKARTA  
TO RUEHC/SECSTATE WASHDC 2809  
INFO RUEHXS/ASSOCIATION OF SOUTHEAST ASIAN NATIONS COLL  
RUCPDO/DEPT OF COMMERCE WASHINGTON DC  
RUEATRS/DEPT OF TREASURY WASHDC  
RUEHKL/AMEMBASSY KUALA LUMPUR 2574  
RUEHBK/AMEMBASSY BANGKOK 8762

UNCLAS SECTION 01 OF 02 JAKARTA 001177

SIPDIS

SENSITIVE

DEPT PASS TO USTR RKIRK  
DEPT FOR EAP/MTS, EAP/RSP, EB/TPP, EB/TPP/BTA  
COMMERCE FOR NSHALIZEH  
USTR FOR KELHERS, BWEISEL  
TREASURY FOR IA-BAUKOL

E.O. 12598: N/A

TAGS: [BEXP](#) [EINV](#) [ECON](#) [ID](#)

SUBJECT: LETTER FROM MINISTER PANGESTU TO USTR: TOBACCO CONTROL ACT

1. (SBU) On July 10, 2009, Embassy received official correspondence from Government of Indonesia (GOI) Minister of Trade Mari Pangestu addressed to United States Trade Representative (USTR) Ambassador Ron Kirk. The letter details GOI concerns regarding the ban on clove cigarettes contained in the Family Smoking Prevention and Tobacco Control Act. The full text of the letter is included below.

2. (SBU) Begin text:

Minister of Trade of the Republic of Indonesia

No. 983/M-DAG/7/2009

Jakarta, July 3, 2009

His Excellency  
Ambassador Ron Kirk  
US Trade Representative  
600 17th Street, N.W.  
Washington, DC 20508

Dear Ambassador Kirk,

I am writing to express my deep concerns regarding the ban on clove cigarettes contained in the Family Smoking Prevention and Tobacco Control Act - which President Obama has just signed. The Indonesian government has repeatedly communicated our steadfast view that Sec.907 of the Act is inconsistent with the general principles of the WTO on non-discrimination as well as the WTO Agreement on the Technical Barriers to Trade.

On many occasions I have conveyed our view that the WTO Agreement on Technical Barriers to Trade (TBT Agreement) obligates the United States to ensure that, in respect of its technical regulations, products imported from the territory of any WTO Member shall be accorded treatment no less favorable than the accorded to domestic like products and to like products originating in any other country. The Agreement also obligates the United States to ensure that its technical regulations are not more trade-restrictive than necessary, thereby creating unnecessary obstacles to international trade. In that regard, the TBT Agreement requires that the United States take account of scientific and technical information. Similar obligations exist under the WTO Agreement on Sanitary and Phytosanitary Measures (SPS Agreement) and the Most-Favoured Nations principles of the General Agreement on Tariffs and Trade 1994.

From my government's perspective, imports of Indonesia's clove

cigarettes are prohibited under the legislation for no reason other than that they contain a natural herbal additive, while US cigarettes containing menthol - a synthesized herbal addictive derived from mint - are explicitly exempted from the prohibition. Clove cigarettes have been a part of Indonesian culture for over a century where they have been manufactured since the late 1800's and, as a result, Indonesia produces 99 percent of the clove cigarettes sold in the U.S. while the U.S. manufactures the bulk of regular and menthol cigarettes consumed by Americans. Therefore, a ban on clove cigarettes would unjustifiably discriminate under WTO standards against Indonesia's cigarette export to the United States in favor of competing, domestically-produced U.S. cigarette products.

Clove cigarettes are estimated to account for a miniscule amount of the total number of cigarettes sold in the United States each year - approximately 0.09 percent of the total. Menthol cigarettes account for approximately 28.21 percent of the total cigarettes sold. While any amount of youth smoking is unacceptable, clove cigarettes barely register statistically in the U.S. among youth smokers compared to menthol cigarettes. Clove cigarettes are estimated to account for a small fraction (0.05 percent) of the total number of cigarettes used by youth smokers while menthol cigarettes are estimated to account for almost half (43.36 percent) of the cigarettes consumed by youth in the U.S. significantly, the clove cigarette industry has done such an effective job of keeping the product away from youth consumption patterns for clove cigarettes because clove usage is so insignificant among youth in the U.S. Moreover, there is no scientifically supportable evidence or risk assessment that has established specific human health risks associated with clove cigarettes that can be used to justify the U.S. banning clove cigarettes while continuing to permit the sale of menthol cigarettes.

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As recently as my recent meetings with you last month we expressed my government's concern about this matter. Our concerns have also been expressed with your immediate predecessor Mr. Peter Allgeier, the Acting United States Trade Representative, in January of this year as well as former United States Trade Representative Susan Schwab.

We had hoped that Section 907 would be modified by Congress to eliminate the discriminatory treatment of clove cigarettes prior to final passage of the bill. Indeed, we understand that as late as last week Senator Dodd and Senator Enzi were working on an amendment that would have allowed the Secretary of Health and Human Services to exempt clove cigarettes from the ban if it were necessary to comply with trade agreements. Unfortunately, Senate leadership blocked all amendments from being offered, including our amendment, and time ran out.

We are deeply concerned that the passage of The Family Smoking Prevention and Tobacco Control Act will become a significant barrier to our ongoing bilateral relationship.

Thank you for your kind attention

Yours sincerely,  
Mari Elka Pangestu

CC:

- 1. Ambassador of the Republic of Indonesia to USA, Washington D.C.;
- 2. Ambassador of the United States of America, Jakarta;
- 3. Director General for International Trade Cooperation, MOT;
- 4. Special Assistant to Minister of Trade for International Cooperation, MOT.

End text.

HUME